



**STATE OF WISCONSIN**  
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***CORRESPONDENCE MEMORANDUM***

**DATE:** May 24, 2004

**TO:** Members of the Employee Trust Fund Board, Teachers Retirement Board, and Wisconsin Retirement Board

**FROM:** Robert F. Weber, DETF Chief Counsel

**SUBJECT:** Scope Statement for new "Fax" Rule

This is an item that requires action by the Board. The Department of Employee Trust Funds asks for Board approval to proceed with drafting a proposed rule as described in the attached Scope Statement.<sup>1</sup> Until a statement of scope is approved, Wis. Stat. § 227.135 (2) prohibits any state employee or official from performing any activity in connection with drafting the proposed rule beyond what is necessary to prepare the scope statement.

Each Board may act to either approve or disapprove the scope statement, or may take no action. However, if a Board fails to take action for 30 days after the statement of scope is presented to the Board, then the statement is deemed to be approved — as provided by Wis. Stat. § 227.135 (2).

This rule-making would modify the original "fax rule" promulgated in 1995 and expand the scope and function of that rule. It would also incorporate other rules promulgated since 1995 that allow faxes of particular documents to be accepted.

As is more fully explained in the accompanying statement titled "Scope of Proposed Rule," the proposed rule would liberalize the Department's acceptance of documents via fax. A current requirement to follow-up the fax by filing the original document would be eliminated. In essence, the DETF proposes to generally treat receipt of a facsimile just as it would treat receipt of a copy of the document itself.

There would be a few exceptions. For example, a document that expressly states that a copy may not be relied upon to the same extent as the original — language found in some powers-of-attorney — could not be accepted by fax. Court orders may be another exception, unless received directly from the court.

<sup>1</sup>

Under Wis. Stat. § 227.135 (3), the Board with policy-making powers over the subject matter of a proposed rule may not take action on a statement of the scope of the proposed rule until at least 10 days after publication of the statement in the register. At the time this memo was written, the scope statement was scheduled to be published in the end-of-month Administrative Register dated May 31, 2004.

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